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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/445,356	03/01/2000	NICOLAS HOCHET	VEI0318PUSA	9843

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BROOKS & KUSHMAN
1000 TOWN CENTER 22ND FL
SOUTHFIELD, MI 48075

EXAMINER

MUSSER, BARBARA J

ART UNIT	PAPER NUMBER
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1733

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DATE MAILED: 08/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/445,356

Applicant(s)

HOCHET ET AL.

Examiner

Barbara J. Musser

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

ATTACHMENT

Regarding applicant's argument that the abstract of Yoshinori does not disclose cutting a narrow incision through one skin and the core while leaving the second panel intact, examiner indicated this information was present in a combination of an oral translation, Figure 3, and the abstract. A written translation of Yoshinori has now been obtained and is attached. In paragraph 14, the reference clearly states the hinge is obtained by cutting down at least the lower skin and the core and maintaining the parts adjacently via the upper skin. The word "maintaining" in this context clearly indicates the parts were joined together before cutting and that the upper skin maintains them adjacent each other after cutting. While examiner disagrees with applicant's characterization of the computer translation of Yoshinori, the written translation now available clearly indicates the hinge is obtained by cutting down at least the lower skin and the core and maintaining the parts adjacently via the upper skin. This translation was created by a human translator, who looked at context to determine the precise meaning of words in the reference.

Regarding applicant's argument that Yoshinori discloses the hinge is formed by the upper layer and the skin, applicant has not restricted the claims to only three layers, excluding an additional layer(24). Additionally, Yoshinori discloses that maintaining the parts adjacent each other can be performed by either the second layer and the skin or by the skin. This indicates the skin by itself can form the hinge.

Regarding applicant's argument that the materials taught by Yoshinori are incompatible with that of that admitted prior art, there is no indication they are

incompatible as both are directed to materials used in forming automobile parts. Additionally, Yoshinori is being used for the method of forming the hinge. It is not intended that the entirety of both references be combined.

Regarding applicant's argument that Ilzhofer teaches away from the present invention, the reference is only used to show that fiber reinforced thermoplastic can be used to form a hinge. It teaches a way to form a hinge when there is only one layer of material. Since the reference is not directed to forming a hinge when multiple layers of material are present, it is not considered to teach contrary to the admitted prior art as it is directed to a hinge having different layers entirely. It is simply used to show that fiber reinforced thermoplastic can be used to form a hinge without external support.

Regarding applicant's argument that there is no suggestion to combine the art, it would have been obvious to use the hinge of Yoshinori in the admitted prior art since it would reduce costs by eliminating the cost of a hinge. The fact that the reference does not specifically state such does not mean it would not have been obvious to one in the art at the time the invention was made.

Regarding applicant's argument that there is no reason to combine Ilzhofer with the other references, the process of Ilzhofer is not being combined with the other references. Rather it is used to show something in general is known in the art, i.e. that fiber-reinforced thermoplastic by itself can be used to form a hinge.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon

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hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that the references fail to address the problems addressed by applicant, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Regarding applicant's argument that Yoshinori does not disclose a narrow incision since it is 4 mm across, 4 mm is only an example. One in the art would appreciate that the reference teaches a general width, not the minimum or maximum width, and that therefore the incision can be smaller.

Regarding applicant's argument that the incision of Yoshinori is not small in comparison to its thickness, applicant does not claim the incision is narrow in comparison to the thickness of the material. It would seem more likely that narrow is in relation to the width of the entire skin particularly since narrow is referring to the width of the incision, it would appear to be related to the width of the entire skin the incision is cut in.

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Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Barbara J. Musser** whose telephone number is **(703)-305-1352**. The examiner can normally be reached on Monday-Thursday; alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



BJM
July 31, 2003


Michael W. Ball
Supervisory Patent Examiner
Technology Center 1700